

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF
MASSACHUSETTS

_____)	
HUDSON SAVINGS BANK,)	
)	
Plaintiff)	CIVIL ACTION NO. 05-11604-GAO
v.)	(Formerly Civil Action No.
)	05-02131-G)
GEORGE C. AUSTIN, III, As Executor of the)	
Estate of George Clifford Austin, Jr., a/k/a)	
G. Clifford Austin, II,)	
)	
GEORGE C. AUSTIN, III, As Heir of George)	
Clifford Austin, Jr., a/k/a G. Clifford Austin, II,)	
)	
UNITED STATES OF AMERICA, and)	
)	
MASSACHUSETTS DEPARTMENT OF)	
REVENUE,)	
Defendants)	
_____)	

AFFIDAVIT OF GEORGE MUTASCIO

I, George Mutascio, on oath, do hereby depose and state the following:

1. I am employed by the Massachusetts Department of Revenue ("DOR") as Assistant Chief of the Collections Bureau. I have worked for the DOR for approximately thirty (30) years. My responsibilities include reviewing the records of the DOR to determine the tax liabilities of taxpayers.

2. As part of my duties with the DOR, I am familiar with, have personal knowledge of and access to the DOR computer system known as MassTax. The MassTax system is designed to allow DOR employees with the appropriate clearance to access taxpayer records and use the program to determine outstanding taxes, penalties and interest. MassTax

contains a record of the effective dates of tax filings, the amount of tax assessed as the tax due on personal income tax returns, any penalties and interest due, and any payments or involuntary collections applied to the balance. MassTax also contains records of whether a Taxpayer has filed for an abatement of tax and/or penalties.

3. On or about April 5, 2007, I accessed the MassTax¹ records of the DOR in regard to the tax liability of G. Clifford Austin, III ("Taxpayer") to determine whether there were any outstanding tax liabilities.

4. DOR records revealed that the Taxpayer was deemed to be personally and individually liable for the assessed and unpaid Massachusetts withholding taxes of Eastern Sheet Metal, Inc., pursuant to the provisions of MG.L.c.62c, Section 31A. On December 7, 2000, the Notice of Proposed Determination of Personal Responsibility and Deemed Assessment was issued to the taxpayer and on February 22, 2001, the Notice of Determination of Personal Responsibility and Deemed Assessment was issued to the taxpayer. Copies of these Notices are attached hereto.

5. On July 11, 2001, a Notice of Massachusetts Tax Lien was recorded against the Taxpayer, in the Middlesex County Registry of Deeds, and it reflects assessed and unpaid Massachusetts withholding taxes for the withholding tax periods of March 1999, June 1999, September 1999, December 1999, March 2000 and June 2000. A copy of the Notice of Massachusetts Tax Lien is attached hereto.

. DOR records also revealed that three (3) Notices of Massachusetts Tax Lien were recorded against Eastern Sheet Metal, Inc. for Massachusetts withholding taxes for the periods of the first quarter of 1999 through the second quarter of 2000, inclusive.

A Notice of Massachusetts Tax Lien was recorded against Eastern Sheet Metal, Inc., in the Middlesex County Registry of Deeds, on July 24, 2000 and it reflects assessed and unpaid Massachusetts withholding taxes for the first quarter of 1999 through the fourth quarter of 1999, inclusive. A copy of the Notice of Massachusetts Tax Lien is attached hereto.

A Notice of Massachusetts Tax Lien was recorded against Eastern Sheet Metal, Inc., in the Middlesex County Registry of Deeds, on March 22, 2001 and it reflects assessed and unpaid Massachusetts withholding taxes for the first quarter of 2000. A copy of the Notice of Massachusetts Tax Lien is attached hereto.

A Notice of Massachusetts Tax Lien was recorded against Eastern Sheet Metal, Inc., in the Middlesex County Registry of Deeds, on December 21, 2000 and it reflects assessed and unpaid Massachusetts withholding taxes for the second quarter of 2000. A copy of the Notice of Massachusetts Tax Lien is attached hereto.

6. MassTax records revealed that the Taxpayer has an outstanding Massachusetts withholding tax liability for the withholding tax period of March 1999, which liability was originally assessed on August 18, 1999, in the amount of \$2,806.13 as of April 30, 2007.

MassTax records revealed that the Taxpayer has an outstanding Massachusetts withholding tax liability for the withholding tax period of June 1999, which liability was originally assessed on July 31, 1999, in the amount of \$2,344.95 as of

¹ The MassTax system of record-keeping is maintained as a regular business activity of the DOR in order to administer the tax laws of the Commonwealth of Massachusetts.

April 30, 2007.

MassTax records revealed that the Taxpayer has an outstanding Massachusetts withholding tax liability for the withholding tax period of September 1999, which liability was originally assessed on November 22, 1999, in the amount of \$4,424.41 as of April 30, 2007.

MassTax records revealed that the Taxpayer has an outstanding Massachusetts withholding tax liability for the withholding tax period of December 1999, which liability was originally assessed on February 28, 2000, in the amount of \$11,016.16 as of April 30, 2007.

MassTax records revealed that the Taxpayer has an outstanding Massachusetts withholding tax liability for the withholding tax period of March 2000, which liability was originally assessed on June 7, 2000, in the amount of \$14,195.94 as of April 30, 2007.

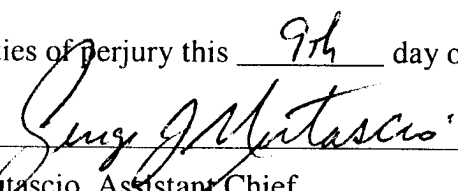
MassTax records revealed that the Taxpayer has an outstanding Massachusetts withholding tax liability for the withholding tax period of June 2000, which liability was originally assessed on August 15, 2000, in the amount of \$9,656.05 as of April 30, 2007.

The total Massachusetts withholding tax liability of the Taxpayer for the withholding tax periods of the first quarter of 1999 through the second quarter of 2000, inclusive, is \$44,443.64 as of April 30, 2007 with a per diem accrual for interest and penalties of \$10.96 after April 30, 2007.

7. The records of the DOR indicate that the Taxpayers have not filed any abatement applications for the subject tax periods.

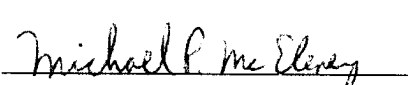
8. Statutory penalties and interest continue to accrue pursuant to G.L. c. 62C, §§ 32 and 33.

Signed under the pains and penalties of perjury this 9th day of April 2007.


George Mutascio, Assistant Chief
Collections Bureau
Massachusetts Department of Revenue



Subscribed and sworn to before me this 9th day of April 2007


Notary Public
My Commission expires: January 8, 2010

THE COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF REVENUE, COLLECTIONS BUREAU
436 DWIGHT STREET
SPRINGFIELD, MA 01103

Date: 07 DEC 2000

G CLIFFORD AUSTIN
204 FARM ROAD
MARLBORO MA 01752

RE: EASTERN SHEET METAL INC

NOTICE OF PROPOSED DETERMINATION OF PERSONAL LIABILITY AND DEEMED ASSESSMENT

Massachusetts law requires certain individuals, as a result of their position, function or responsibility in a corporation or partnership to pay over taxes to the Commonwealth. M.G.L. c.62B, Sec.5; c.64G, Sec.7B; c.64H, Sec.16; c.64I, Sec.17. When the business fails to meet these obligations, those people who are under a duty to pay over taxes (responsible persons) may be held individually and personally liable for the assessed and unpaid taxes of the business. M.G.L. c.62C, Sec.31A. For further information on this subject, refer to Regulation 830 CMR 62C-31A.1.

Massachusetts Department of Revenue ("Department") records indicate that the business listed herein has been assessed but has not paid the taxes detailed on this notice. Our investigation shows that you, as a corporate officer, director, or employee are under a duty to pay these taxes.

As a result of the business' and your failure to meet these responsibilities, the Department is issuing this Notice of Proposed Determination of Personal Liability and Deemed Assessment. You have the opportunity to appeal this proposed determination or the validity of the assessments against the business by conferring with an authorized representative of the Department.

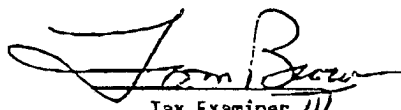
If you do not appeal, or if you appeal but fail to provide sufficient evidence that you were not under a duty to pay over the assessed taxes, you will be held personally and individually liable for the business's unpaid assessed taxes, and those taxes will be deemed to be assessed against you. A second letter from the Department will notify you of this final determination of personal and individual liability and deemed assessment.

If you decide to appeal the proposed determination of personal liability or the validity of the assessment against the business, you must request a conference with the Commissioner of Revenue's designee. The request must be in writing and must be received within thirty days after the date of this notice. The request must include your complete address and daytime telephone number and must be sent to the Collections Bureau at the above address.

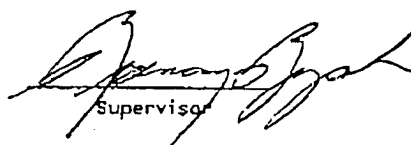
After a conference is held; the Department will notify you in writing of its final decision. If you do not appeal this proposed determination within thirty days or if you fail to provide sufficient proof that you are not personally and individually liable for the tax, a Notice of Determination of Personal Liability and Deemed Assessment will be sent to you. At that time a lien will arise in favor of the Commonwealth of Massachusetts on all property or rights to property belonging to you. G.L. c.62C Sec.31A, Sec. 50.

Commissioner of Revenue

By:


Tax Examiner II

413-784-1000 EXT. 20256


Supervisor

☐ Conference requested

☐ I agree with this notice and waive my rights to a conference.

Massachusetts Department Of Revenue

TRANS CODE - 217

G CLIFFORD AUSTIN
204 FARM ROAD
MARLBORO MA 01752

Return To:
Department Of Revenue
P.O. Box 7021
Boston, MA 02204

PAYMENT DUE DATE: 01-06-01
AMOUNT ENCLOSED:
TOTAL AMOUNT OWED: \$39,721.94

BILL NUMBER: 0500 0000 6094
FID: ☐

Please detach and return the above portion with your FULL payment.

RE: Taxpayer Name: EASTERN SHEET METAL INC

Deadline for Conference: 01-06-01

FID: ☐
CASE NUM:
DEMAND DATE: 01-06-01
PAGE: 1

Notice of Proposed Assessment

Massachusetts Department of Revenue records indicate that the above taxpayer has been assessed but has not paid the taxes detailed on this notice. Our investigation shows that you, as a corporate officer, director, or employee are under a duty to pay these taxes. You are hereby notified of the intent of the Commissioner of Revenue to determine you to be personally and individually liable for these taxes.

Tax Type	Period End Date	Filing Entity	Date of Original Assessment	Tax Liability	Interest	Penalty	Payments/Credits	Balance Due
WITH INC	03-31-99		08-18-99	\$10,558.27	\$873.64	\$902.45	\$10,564.86	\$1,769.50
WITH INC	06-30-99		07-31-99	\$10,838.88	\$922.18	\$556.53	\$10,838.88	\$1,478.71
WITH INC	09-30-99		11-22-99	\$15,087.47	\$1,589.25	\$1,076.14	\$11,818.23	\$5,934.63
WITH INC	12-31-99		02-28-00	\$15,267.20	\$1,366.25	\$997.39	\$0.00	\$17,630.84
WITH INC	03-31-00		06-07-00	\$6,858.98	\$476.64	\$411.53	\$0.00	\$7,747.15
WITH INC	06-30-00		08-15-00	\$4,811.98	\$175.71	\$173.42	\$0.00	\$5,161.11
				PAYMENT DUE DATE	01-06-01	TOTAL AMOUNT OWED	\$39,721.94	

THIS BILL

If you agree with this proposed determination, make your check or money order payable to the Commonwealth of Massachusetts and write your identification number in the lower left corner of your check.

THE COMMONWEALTH OF MASSACHUSETTS
DEPARTMENT OF REVENUE, COLLECTIONS BUREAUG CLIFFORD AUSTIN
31 VILLAGE DR
MARLBOROUGH MA 01752

Date: 22 FEB 2001

RE:EASTERN SHEET METAL INC

SSN: [REDACTED]

NOTICE OF DETERMINATION OF PERSONAL LIABILITY AND DEEMED ASSESSMENT

This office mailed you a Notice of Proposed Determination of Personal Liability and Deemed Assessment. The notice indicated that you were a responsible person charged with the duty of paying over the taxes detailed on this notice for the business listed herein.

The notice also stated that if you did not appeal by requesting a conference within thirty days of the date of the notice, the Department of Revenue ("Department") would make a final determination that you were personally and individually liable for the assessed and unpaid taxes of this business and that as a result, those taxes would be deemed to be assessed against you. YOU HAVE NOT REQUESTED A CONFERENCE within the thirty day period, therefore, as of the date of this notice, the Department has determined that you are personally and individually liable for the assessed and unpaid taxes of this business. This determination operates as a deemed assessment against you for those taxes. M.G.L. c.62C, Sec.31A. For further information on this subject, refer to Regulation 830 CMR 62C, 31A.1. As a result, you are now personally and individually liable for all of the amounts detailed on this notice.

You have the right to appeal the assessed amounts against the business and the deemed assessment against you. To appeal, you must file an Application for Abatement, Form CA-6, with the Department within one of the following time limits, whichever is later:

- within 60 days from the date of the determination of personal liability as noted above; or
- within three years from the due date for filing the return by this business regardless of any extension of time to file; or
- within two years from the date that the tax was originally assessed against this business; or
- within one year from the date the tax was paid.

Generally, an Application for Abatement will be considered only if the required returns have been filed by this business. However, if you are applying only for an abatement of the determination that you are personally liable, that is of the deemed assessment noted above, the returns of this business need not have been filed. If you are appealing the validity of the original assessment against this business, you must attach copies of this business's returns to the Form CA-6. If the returns were not filed or if you cannot locate them, you must file the required returns based on the best information available to you. Please be advised that filing a return to satisfy this requirement will not be considered evidence in any further proceeding, of your duty to pay over the tax due.

The amount of tax detailed on this notice is now due and payment is hereby demanded. Therefore, a lien will arise in favor of the Commonwealth of Massachusetts on all property or rights to property belonging to you if the assessment remains unpaid. M.G.L. c.62C, Sec.31A, Sec.50.

Tax Examiner
SupervisorDate of Determination of Personal Liability & Deemed Assessment: 02-22-2001
Bill Number: 0510 0000 4776

Massachusetts Department Of Revenue

TRANS CODE - 217

G CLIFFORD AUSTIN
31 VILLAGE DR
MARLBOROUGH MA 01752

Return To:
Department Of Revenue
P.O. Box 7021
Boston, MA 02204

PAYMENT DUE DATE: 03-04-2001
AMOUNT ENCLOSED:
TOTAL AMOUNT OWED: \$41,090.39

BILL NUMBER: 0510 0000 4776
FID:

Please detach and return the above portion with your FULL payment.

RE: Taxpayer Name: EASTERN SHEET METAL INC

Date of Deemed Assessment: 02-22-2001

FID:
CASE NUM:
DEMAND DATE: FEB 22, 2001
PAGE: 1

Notice of Deemed Assessment

The Commissioner of Revenue hereby notifies you that the tax liabilities set forth on this notice for the taxpayer named above have been deemed to be assessed against you personally and individually. Demand for payment of these taxes is hereby made.

Tax Type	Period End Date	Filing Entity	Date of Original Assessment	Tax Liability	Interest	Penalty	Payments/Credits	Balance Due
WITH INC	03-31-99		08-18-99	\$10,558.27	\$916.29	\$902.45	\$10,564.86	\$1,812.15
WITH INC	06-30-99		07-31-99	\$10,838.88	\$957.81	\$556.53	\$10,838.88	\$1,514.34
WITH INC	09-30-99		11-22-99	\$15,087.47	\$1,732.05	\$1,125.18	\$11,818.23	\$6,126.47
WITH INC	12-31-99		02-28-00	\$15,267.20	\$1,789.62	\$1,226.40	\$0.00	\$18,283.22
WITH INC	03-31-00		06-07-00	\$6,858.98	\$618.30	\$519.41	\$0.00	\$7,996.69
WITH INC	06-30-00		08-15-00	\$4,811.98	\$299.94	\$245.60	\$0.00	\$5,357.52
</								

Make your check or money order payable to the Commonwealth of Massachusetts and write your identification number in the lower left corner of your check.

"DEEMLIAB"

07-20-05

06:28

From-US ATTORNEY'S OFFICE

6177483871

T-415 P.012/013 F-933

Commonwealth of Massachusetts Department of Revenue
NOTICE OF MASSACHUSETTS TAX LIEN

No. 0530 0000 4616 1

Pursuant to the provisions of Section 50 of Chapter 62C of the General Laws, notice is hereby given that there have been assessed against the following named taxpayer taxes (including interest and penalties) which remain unpaid, and that the amount of said taxes is a lien in favor of the Commonwealth of Massachusetts upon all property and rights to property belonging to said taxpayer.

AUSTIN, G CLIFFORD
 31 VILLAGE DR
 MARLBOROUGH

MA 01752

PLAINTIFF'S
 EXHIBIT

ALL-STATE LEGAL

Tax Type	Period End Date	Date of Deemed Assessment	Balance Due
WITH INC	03-31-99	02-22-01	\$1,865.64
WITH INC	06-30-99	02-22-01	\$1,559.04
WITH INC	09-30-99	02-22-01	\$2,941.57
WITH INC	12-31-99	02-22-01	\$6,798.93
WITH INC	03-31-00	02-22-01	\$8,335.11
WITH INC	06-30-00	02-22-01	\$5,587.31
TOTAL			\$27,087.60

PLACE OF FILING

Registry of Deeds MIDDLESEX COUNTY, CAMBRIDGE, MA

MDOR-Collections Bureau
 P. O. Box 7021
 Boston, MA 02204

Re: EASTERN SHEET METAL INC

Req. by: THOMAS A. BROWN

Signature
 Title

BUREAU CHIEF

BK 31633 PG 289

Commonwealth of Massachusetts Department of Revenue
NOTICE OF MASSACHUSETTS TAX LIEN

No. 0440 0001 4390

Pursuant to the provisions of Section 50 of Chapter 62C of the General Laws, notice is hereby given that there have been assessed against the following-named taxpayer taxes (including interest and penalties) which remain unpaid, and that the amount of said taxes is a lien in favor of the Commonwealth of Massachusetts upon all property and rights to property belonging to said taxpayer.

EASTERN SHEET METAL INC.
213 CALIFORNIA ST
NEWTON, MA 02458

Tax Type	Period End Date	Assessment Date	Assessment Amounts	Statutory Additions	Balance Due
WITH INC	03/31/99	08/18/99	\$10,558.27	\$1,709.69	\$1,703.10
	06/30/99	07/31/99	\$10,838.88	\$1,385.38	\$5,567.15
	09/30/99	11/22/99	\$15,087.47	\$1,916.38	\$17,003.85
	12/31/99	02/28/00	\$15,267.20	\$1,333.44	\$16,600.64
TOTAL					\$40,874.74

PLACE OF FILING

Registry of Deeds MIDDLESEX COUNTY/CAMBRIDGE, MA

Clerk-City or Town Hall

Secretary of State-Boston, Ma.

MDOR-COLLECTIONS BUREAU
P. O. BOX 7021
BOSTON, MA 02204

THOMAS BROWN
TAX EXAMINER

Signature

Title DEPUTY COMMISSIONER

Commonwealth of Massachusetts Department
NOTICE OF MASSACHUSETT

BK 32535P0416

No. 0440 0001 4756

Pursuant to the provisions of Section 50 of Chapter 62C of the General Laws, notice is hereby given that there have been assessed against the following named taxpayer taxes (including interest and penalties) which remain unpaid, and that the amount of said taxes is a lien in favor of the Commonwealth of Massachusetts upon all property and rights to property belonging to said taxpayer.

EASTERN SHEET METAL INC
 213 CALIFORNIA ST
 NEWTON, MA 02458

Tax Type	Period End Date	Assessment Date	Assessment Amounts	Statutory Additions	Balance Due
WITH INC	03/31/00	06/07/00	\$6,858.98	\$1,150.75	\$8,009.73
TOTAL					\$8,009.73

PLACE OF FILING

Registry of Deeds MIDDLESEX COUNTY/CAMBRIDGE
 Clerk-City or Town Hall
 Secretary of State-Boston, Ma.

MDCR-Collections Bureau
 P. O. Box 7021
 Boston, MA 02204

Signature

Stephen M. Brown

Title DEPUTY COMMISSIONER

THOMAS BROWN
 TAX EXAMINER

MSD 03/22/01 08:49:54

BK 3216 PG 413

Commonwealth of Massachusetts Department of Revenue
NOTICE OF MASSACHUSETTS TAX LIEN

No. 0440 0001 4606

Pursuant to the provisions of Section 50 of Chapter 62C of the General Laws, notice is hereby given that there have been assessed against the following-named taxpayer taxes (including interest and penalties) which remain unpaid, and that the amount of said taxes is a lien in favor of the Commonwealth of Massachusetts upon all property and rights to property belonging to said taxpayer.

EASTERN SHEET METAL INC
213 CALIFORNIA ST
NEWTON, MA 02458

Tax Type	Period End Date	Assessment Date	Assessment Amounts	Statutory Additions	Balance Due
WITH INC	06/30/00	08/15/00	\$4,811.98	\$351.94	\$5,163.92
TOTAL					\$5,163.92

PLACE OF FILING

Registry of Deeds

MIDDLESEX COUNTY, Cambridge, MA

Clerk-City or Town Hall

Secretary of State-Boston, Ma.

MASSACHUSETTS COLLECTIONS BUREAU
P.O. BOX 7021
BOSTON, MA 02204

THOMAS BROWN
TAX EXAMINER

Signature

Title

DEPUTY COMMISSIONER